

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO. 452 OF 2001

IN

ARBITRATION PETITION (LODGING) NO.139 OF 2001

IN

ARBITRATINO PETITION NO. 303 OF 2001

Indian Oil Corporation Ltd. ... Appellant

Versus

Him Cylinders Ltd. & Anr. ... Respondents

Mr. C.S.Balsara i/b. Negandhi Shah & Himayatullah for
the appellant.

None for Respondents.

CORAM: D.K.DESHMUKH &

J.H.BHATIA, JJ.

DATE : 4th September, 2007.

P.C.

1. By this Appeal, the appellant-Indian Oil Corporation Ltd. challenges the order passed by the learned Single Judge of this Court in Arbitration

Petition (Lodging) No. 139 of 2001 dated 2nd April, 2001. That order was passed under Section 9 of the Arbitration & Conciliation Act, 1996 (for short "the Act"). The petitioner before the learned Single Judge was supplier of cylinders to the appellant-Indian Oil Corporation. There was some dispute between the parties regarding the price of the cylinders. The arbitration clause was invoked.

2. In the meantime, an application was made under Section 9 of the Act for an order for deposit of the amount which the Indian Oil Corporation was adjusting against future payments. The learned Single Judge on finding that the petitioner before the learned Single Judge has made out a prima facie case, directed deposit of the amount in Court.

3. Now, it is a settled law specially in view of the Judgment of the Supreme Court in the case of **Adhunik Steels Ltd. vs. Orissa Manganese and Minerals Pvt. Ltd.** reported in 2007 AIR SCW 4558, where the Supreme Court has said that while exercising powers under Section 9 of the Act, the Court has to keep in mind all well-settled principles of grant of interim relief. What has been directed to be deposited by the learned Single Judge is the amount for which an award may be passed in favour of the respondents. In our opinion,

even considering that the petitioner before the learned Single Judge had a strong prima facie case, then also unless a case is made out for attachment before judgment, neither the amount could have been attached nor could there have been a direction issued to the Indian Oil Corporation to deposit the amount for which award may be made. The appellant is a Government of India Undertaking. Therefore, it cannot be said that in case an award is made, the respondents would not be in a position to execute the award.

4. Looking from any point of view, in our opinion, there is no justification for directing the appellant-Indian Oil Corporation to deposit the amount in Court. The order impugned in the Appeal, in our opinion, therefore, is liable to be set aside. It is accordingly set aside.

Appeal is disposed of.

5. In view of the order in Appeal, the Notice of Motion No. 1879 of 2001 stands disposed of.

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(D.K.DESHMUKH, J)

(J.H.BHATIA, J.)